

DEASEY, MAHONEY & VALENTINI, LTD.

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WILLIAM H. KOPKE , JR., INC.

CIVIL ACTION

1000 Northern Boulevard

Suite 200

Great Neck, NY 11021

Plaintiff

v.

MAERSK A/S, T/A SEALAND AMERICAS

2799 South Columbus Blvd.

Philadelphia, PA 19148

Defendant

COMPLAINT IN ADMIRALTY

Plaintiff, William H. Kopke , Jr., Inc., by and through its attorneys, Deasey, Mahoney & Valentini, Ltd., hereby brings this civil action against Defendant, and in support thereof represents upon information and belief, as follows:

JURISDICTION AND VENUE

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and this Court has jurisdiction pursuant to 28 U.S. C. §1333. Pursuant to the forum selection provision in the applicable Bills of Lading, this

District has exclusive jurisdiction to hear disputes regarding shipments of goods to the United States.

PARTIES

2. At all times hereinafter mentioned, Plaintiff, William H. Kopke , Jr., Inc. (hereinafter “Plaintiff” or “Kopke”), was and still is a corporation organized and existing under the laws of the State of New York, with an address and principal place of business as set forth in the caption, and was engaged in the business of importing and distributing fruit and perishable goods.

3. Upon information and belief, at all times hereinafter mentioned, Defendant, MAERSK A/S, t/a SEALAND AMERICAS, (hereinafter “Maersk”), was and still is a corporation organized and existing under the laws of a foreign state, with an office and place of business as set forth in the caption, and was and still is the owner and/or disponent owner and/or charterer and/or manager and/or operator of the M/V SAFMARINE MAKUTU, and was engaged in the common and/or private carriage of merchandise by water for hire.

4. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the shipments and consignments at issue, as their respective interests may ultimately appear, and Plaintiff is entitled to maintain this action.

5. Plaintiff, and any and all other parties in interest, have duly performed all valid conditions precedent to the contracts of carriage on their part to be performed and all conditions precedent to Plaintiff’s recovery under the identified Bills of Lading have occurred or have been performed by Plaintiff and/or its predecessors or successors in

title.

6. On or about February 6, 2020, the M/V SAFMARINE MAKUTU called at the Port of Callao, Peru.

7. On or about January 8, 2020 at the Port of Callao, Peru, there was shipped and delivered to Maersk, as a common and/or private carrier, for delivery to the Port of San Juan, Puerto Rico, a cargo of grapes in two refrigerated containers, then being in good order and condition, and Defendant then and there accepted said cargo so shipped and delivered to them, and in consideration of certain agreed freight charges, issued certain bills of lading, including but not limited to the bills of lading attached hereto as Exhibit "A", which were signed and delivered by Maersk, or by the Master of the vessel and/or his duly authorized agent, and Maersk agreed to transport and carry the said cargo to the destination stated therein and deliver it to the consignees named in the bill of lading in the same good order and condition as when shipped, delivered to and received by Defendant.

8. Pursuant to the contracts of carriage, Maersk owed a contractual and statutory duty to properly carry, bail, keep, care for, protect, and deliver the shipments to Plaintiff in the normal course, and in the same good order and condition as when received.

9. Specifically, Defendant was engaged to provide cold treatment for the cargo so it would be accepted for discharge by the U.S.D.A.

10. After receiving, loading, and stowing the aforementioned containers of grapes, the M/V SAFMARINE MAKUTU departed the port of Callao, Peru on or about February 8, 2020, and sailed for the Port of San Juan, Puerto Rico.

11. The M/V SAFMARINE MAKUTU arrived at the Port of San Juan, Puerto Rico on or about February 22, 2020, but the two containers were not discharged from the vessel and were not cleared for entry by the U.S.D.A.

12. The containers remained on the M/V SAFMARINE MAKUTU when she departed, and were not discharged and delivered at the Port of San Juan, Puerto Rico until on or about March 7, 2020.

13. Upon inspection, the grapes were not in the same good order and condition as when shipped, but were found to be deteriorated and unmarketable due to the delayed delivery.

14. Efforts to mitigate the loss by selling the grapes on the secondary market were largely unsuccessful, and most of the cargo was dumped.

15. The sound market value of the shipment of 7,024 cases of clementines on the date that they should have been delivered by Maersk was \$59,280.

16. The loss sustained by Plaintiff due to the handling of the unmarketable grapes was \$66,466.23. Plaintiff reserves the right to revise this amount if different information develops.

17. As a direct and proximate result of the breaches of duty by Maerskthe, Plaintiff sustained damages in the estimated amount of \$66,466.23, exclusive of prejudgment interest and costs.

WHEREFORE, Plaintiff, William H. Kopke , Jr., Inc., prays:

(a) Process of arrest in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime claims may issue against Defendant,

MAERSK A/S, t/a SEALAND AMERICAS, citing it to appear and answer, under oath, all and singular the matters herein.

(b) If Defendant, MAERSK A/S, t/a SEALAND AMERICAS, cannot be found within this District, then all of its property, credits and/or effects in the possession of any person, partnership, or corporation, including any vessel owned or operated by said Defendant be attached as provided in the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure in the sum of Four Hundred Ten Thousand Dollars (\$100,000).

(d) Judgment be entered in favor of Plaintiff and against Defendant for the damages as aforesaid, with interest, costs and attorney's fees.

(e) The Court grant such other and further relief to Plaintiff as in law and justice it may be entitled to receive.

DEASEY, MAHONEY & VALENTINI, LTD.

BY: /s/ George Zacharkow

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Email: GZacharkow@dmvlawfirm.com

Attorneys for Plaintiff

Dated: March 5, 2021

EXHIBIT “A”

PARTICULARS FURNISHED BY SHIPPER

VERIFY

Sales LLC

COPY

Signed by the Carrier Maersk A/S trading as Sealand Americas

This transport document has one or more numbered pages

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B/L: SLN309384

Page : 2

Freight Collect:

"Goods carried under this transport document are subject to cold treatment for which a fee is being charged. For such Goods, Carrier undertakes to exercise due diligence to provide properly approved containers and temperature measuring and recording devices.

Carrier reserves the right to retain the Goods inside the Container:

- (i) at origin; if between the time the container has been closed by the Merchant and 24 hours prior to the loading on the first vessel the temperature of the Goods has increased or is still out of the agreed protocol; and/or
- (ii) at destination; if at the time of arrival at the port of destination, the sterilization period is due to be completed within a maximum of four days.

Carrier reserves the right to re-start the cold treatment protocol during carriage at its discretion when there is sufficient time to finalize the protocol within a maximum of four days after the arrival of the last vessel, according to the transport plan, to the port of destination.

Carrier reserves the right to change the set temperature in the Container to ensure the timely completion of the cold treatment protocol.

If the Carrier is not able to complete cold treatment of the Goods in accordance with the above, the Merchants remedy (to the exclusion of any other) is, that:

- (i) If the Merchant chooses to complete cold treatment after delivery of the Goods by the Carrier; the Carrier will waive any detention, demurrage and/or storage costs for up to five (5) days; or
- (ii) If the Merchant decides to divert the Goods to a new destination where cold treatment is not required; (a) the Carrier will waive the change of destination charge and freight to such new destination; and (b) the Carrier will compensate the Merchant for the difference in value of the Goods at the original destination and the destination chosen under this item (ii) (values to be determined with reference to relevant source for sound market value of the particular commodity as determined at the discretion of the Carrier).

Merchant agrees to hold harmless and indemnify Carrier for any and all consequences arising from or out of Goods being carried at an agreed temperature lower than the optimal carriage temperature for the goods."

Freight & Charges	Rate	Unit	Currency	Prepaid	Collect
USDA Inspection Charge	237.00	Per Container	USD		237.00
USD			USD		4307.00
Charges Name	Prepaid/Collect	Invoice Party	Customer Code	Collection Business Unit	
USDA Inspection Charge	Collect	SUPERMERCADOS ECONO, INC	32800015702	Sealand Puerto Rico - San Juan	

B/L: SLN309384

Page : 3

CY/CY

Freight & Charges		Rate	Unit	Currency	Prepaid	Collect
Charges Name		Prepaid/Collect	Invoice Party	Customer Code	Collection Business Unit	

PARTICULARS FURNISHED BY SHIPPER

Below freight details will not be part of Original Bill of Lading unless requested by customer
 (Owner, shipper or its agent) or Shipper, but without responsibility of or representation by Carrier (see clause 17)

Charges Name	Prepaid/Collect	Invoice Party	Customer Code	Collection Business Unit
Bunker Adjustment Factor	Collect	SUPERMERCADOS ECONO, INC	32800015702	Sealand Puerto Rico - San Juan
Basic Ocean Freight	Collect	SUPERMERCADOS ECONO, INC	32800015702	Sealand Puerto Rico - San Juan
Cold Treatment Service	Collect	SUPERMERCADOS ECONO, INC	32800015702	Sealand Puerto Rico - San Juan

Signed by the Carter Maersk A/S trading as Sealord Americas

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B/L: SLN299398

Page : 2

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CY/CY

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Charge Name	Prepaid/Collect	Invoice Party	Customer Code	Collection Business Unit		
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